

March 17, 2005

Legislative Sponsors, Washington State House of Representatives
PO Box 40600
Olympia, WA 98504-0600

Legislative Sponsors, Washington State Senate
Joel M. Pritchard Building
415 15th Ave SW
PO Box 40482
Olympia, WA 98504-0482

Re: HB 1586 and SB 5575

Dear Sponsors:

We, the appointed members of the Washington State Human Rights Commission, commend you for your sponsorship of House Bill No. 1586 and Senate Bill No. 5575: **“Permitting a college or university to maintain a diverse student population by considering race, color, ethnicity, or national origin in the admission and transfer process without using quota, predetermined points, or set asides.”** This proposed change in the law will allow higher educational institutions in the state to achieve greater diversity and educational opportunity for students of all races and ethnicities through higher rates of admission to the state’s fine higher educational system. We believe it to be appropriate, consistent with federal law, and useful for economic development.

As the agency responsible for administering and enforcing the state’s law against discrimination, the Human Rights Commission receives and investigates complaints by persons alleging discrimination. The mission of the HRC is to eliminate and prevent discrimination through the fair application of the law, the efficient use of resources, and the establishment of productive partnerships in the community. By creating a more diverse group of well-educated people in the State, the proposed measures will help implement the HRC's mission of reducing and eliminating discrimination.

The demographics of the State of Washington are changing, with many more Latino and Asian-American immigrants. Racial minorities continue to suffer the adverse educational and economic effects of past discrimination. Education is a pivotal factor in economic

success and the ability to contribute to the state. Since the state's law was changed, the U.S. Supreme Court issued a landmark ruling in 2003 on the constitutionality of using race as one factor among many in university admissions decisions. Numerous Fortune 500 companies, as well as top ranking members of the military, submitted legal briefs in support of the University of Michigan Law School's diversity-in-admissions policy. Tomorrow's leaders in the military and in business are being created today in our colleges and universities.

The U.S. Supreme Court upheld the constitutionality of programs which consider diversity as one factor in higher education admissions. The Court went even further, and found a compelling state interest in a "narrowly tailored" use of affirmative action, when race is a factor but not the only factor in public colleges' and universities' admissions policies. Late last year, the 9th U.S. Circuit Court of Appeals followed suit and upheld the University of Washington School of Law's efforts to ensure educational diversity. We believe that HB 1586 and SB 5575 are sufficiently narrowly tailored to pass constitutional scrutiny. They contain language prohibiting quotas and set-asides. They preserve non-discrimination language.

The current statute has had the unintended effect of causing a decline in the enrollment of minority students at the state's universities. We believe that the proposed revision continues to respect the will of the voters of the state who created the current law. The vision of an educational system open to all the residents of the state is preserved. Currently, our public colleges and universities can evaluate applicants on a variety of traits and qualifications, such as reasoning ability, age, writing style, grade-point average, athletic ability, musical talent and veteran status. Adding one factor among many will enhance the credibility of the process in the eyes of the state's minority residents.

We believe that the bills proposed strike the right balance of diversity and fairness. Amending current state law along the lines of the U.S. Supreme Court's decision would set aside no admission slots for members of any racial groups, would give no racial group separate consideration based solely on its status as a racial group, and would not use predetermined, numerical values for diversity factors. Instead, public colleges and universities would be allowed the flexibility to include race and ethnicity as one of many characteristics considered during the admissions process. This flexibility would be subject to periodic review in order to determine whether it is still needed to achieve diversity, and subject to termination once it no longer is. The programs will expire when the aim has been achieved.

Every one of our state's public colleges and universities has indicated its desire to consider an applicant's background in its entirety and include race and ethnicity as one consideration among many in the admissions process. They each believe that their core educational mission — to create a quality educational environment that produces well-trained future leaders and workers — is improved where a diverse student body is present. Diversity has benefits for students as well as the institutions, and helps create the diverse economic base upon which the future economic viability of our State depends. Just as we cannot rely on a single industry, we cannot rely on a single type of student.

Many studies have shown that locations that are more open to people of all kinds are more successful in attracting and keeping educated, hard-working entrepreneurs who create jobs. The more people who have good jobs, the less call there is on social benefit programs, and the more people contribute to the state's revenues.

As members of a Commission created in 1949 with the mission of eliminating discrimination in the State of Washington, we are proud to say that the state has been at the vanguard of civil rights for decades. We support your efforts to maintain our position at the vanguard, and support expanded opportunities in higher education. Thank you for the opportunity to express our views on this important subject. We and the staff of the HRC are available to answer questions and provide further information.

Respectfully,

J. Reiko Callner, Commission Chair
Washington State Human Rights Commission

Ellis Casson, Commissioner

Dallas Barnes, Commissioner

Deborah Sioux Cano-Lee, Commissioner

Jerry Hebert, Commissioner